

ASSEMBLY BILL

No. 265

Introduced by Assembly Member Mullin

February 4, 2003

An act to amend Sections 22134, 22664, 24201, and 24600 of, and to repeal Sections 22134.5, 22135, and 22136 of, the Education Code, relating to state teachers' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 265, as introduced, Mullin. State teachers' retirement: final compensation.

Under existing law, retirement benefits for members of the Defined Benefit Program of the State Teachers' Retirement Plan are based upon, among other things, the member's final compensation. For that purpose, final compensation is defined as the highest average annual compensation earnable by a member during any period of 3 consecutive school years; except that, for classroom teachers and members with 25 or more years of credited service, final compensation is defined as the highest average annual compensation earnable by the member during 12 consecutive months, as specified.

This bill would define final compensation for all members of the Defined Benefit Program as the highest average annual compensation earnable by the member during 12 consecutive months, as specified, and would make related technical and conforming changes. The bill would declare the Legislature's intent that any increased costs resulting from the act would be paid from existing funds in the Teachers' Retirement Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 22134 of the Education Code is amended to read:

22134. (a) “Final compensation” means the highest average annual compensation earnable by a member during any period of ~~three 12~~ consecutive ~~school years~~ *months* while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last ~~three 12~~ consecutive ~~years~~ *months* of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of ~~three 12~~ consecutive ~~years~~ *months*, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member’s retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate ~~three 12~~ consecutive ~~years~~ *months* for the purpose of determining final compensation under Section 23805.

(e) If a member has received service credit for part-time service performed prior to July 1, 1956, the member’s final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances,

1 family allowances, and children's portions of survivor benefit
2 allowances payable on and after January 1, 1978 2004. The
3 compensation earnable for periods of part-time service shall be
4 adjusted by the ratio that part-time service bears to full-time
5 service.

6 ~~(g) The amendment of former Section 22127 made by Chapter~~
7 ~~782 of the Statutes of 1982 does not constitute a change in, but is~~
8 ~~declaratory of, the existing law.~~

9 SEC. 2. Section 22134.5 of the Education Code is repealed.

10 ~~22134.5. (a) Notwithstanding Section 22134, "final~~
11 ~~compensation" means the highest average annual compensation~~
12 ~~earnable by a member during any period of 12 consecutive months~~
13 ~~while an active member of the Defined Benefit Program or time~~
14 ~~during which he or she was not a member but for which the~~
15 ~~member has received credit under the Defined Benefit Program;~~
16 ~~except time that was so credited for service performed outside this~~
17 ~~state prior to July 1, 1944. The last consecutive 12-month period~~
18 ~~of employment shall be used by the system in determining final~~
19 ~~compensation unless designated to the contrary in writing by the~~
20 ~~member.~~

21 ~~(b) For purposes of this section, periods of service separated by~~
22 ~~breaks in service may be aggregated to constitute a period of 12~~
23 ~~consecutive months, if the periods of service are consecutive~~
24 ~~except for the breaks.~~

25 ~~(c) The determination of final compensation of a member who~~
26 ~~has concurrent membership in another retirement system pursuant~~
27 ~~to Section 22115.2 shall take into consideration the compensation~~
28 ~~earnable while a member of the other system, provided that all of~~
29 ~~the following exist:~~

30 ~~(1) The member was in state service or in the employment of~~
31 ~~a local school district or a county superintendent of schools.~~

32 ~~(2) Service under the other system was not performed~~
33 ~~concurrently with service under the Defined Benefit Program.~~

34 ~~(3) Retirement under the Defined Benefit Program is~~
35 ~~concurrent with the member's retirement under the other system.~~

36 ~~(d) The compensation earnable for the first position in which~~
37 ~~California service was credited shall be used when additional~~
38 ~~compensation earnable is required to accumulate three~~
39 ~~consecutive years for the purpose of determining final~~
40 ~~compensation under Section 23805.~~

1 ~~(e) If a member has received service credit for part-time service~~
2 ~~performed prior to July 1, 1956, the member's final compensation~~
3 ~~shall be adjusted for that service in excess of one year by the ratio~~
4 ~~that part-time service bears to full-time service.~~

5 ~~(f) The board may specify a different final compensation with~~
6 ~~respect to disability allowances, disability retirement allowances,~~
7 ~~family allowances, and children's portions of survivor benefit~~
8 ~~allowances payable on and after January 1, 1978. The~~
9 ~~compensation earnable for periods of part-time service shall be~~
10 ~~adjusted by the ratio that part-time service bears to full-time~~
11 ~~service.~~

12 ~~(g) This section shall only apply to a member who has 25 or~~
13 ~~more years of credited service, excluding service credited pursuant~~
14 ~~to Section 22714, 22715, 22717, or 22826, but including any~~
15 ~~credited service that a court has ordered be awarded to a~~
16 ~~nonmember spouse pursuant to Section 22652. This section also~~
17 ~~shall apply to a nonmember spouse, if the member had at least 25~~
18 ~~years of credited service, excluding service credited pursuant to~~
19 ~~Section 22714, 22715, 22717, or 22826, on the date the parties~~
20 ~~separated, as established in the judgment or court order pursuant~~
21 ~~to Section 22652.~~

22 SEC. 3. Section 22135 of the Education Code is repealed.

23 ~~22135. (a) Notwithstanding subdivisions (a) and (b) of~~
24 ~~Section 22134, "final compensation" means the highest annual~~
25 ~~compensation earnable by an active member who is a classroom~~
26 ~~teacher who retires, becomes disabled, or dies, after June 30, 1990,~~
27 ~~during any period of 12 consecutive months during his or her~~
28 ~~membership in the plan's Defined Benefit Program. The last 12~~
29 ~~consecutive months of employment shall be used by the system in~~
30 ~~determining final compensation unless designated to the contrary~~
31 ~~in writing by the member.~~

32 ~~(b) Section 22134, except subdivision (a) of that section, shall~~
33 ~~apply to classroom teachers who retire after June 30, 1990, and any~~
34 ~~statutory reference to Section 22134 or "final compensation" with~~
35 ~~respect to a classroom teacher who retires, becomes disabled, or~~
36 ~~dies, after June 30, 1990, shall be deemed to be a reference to this~~
37 ~~section.~~

38 ~~(c) As used in this section, "classroom teacher" means any of~~
39 ~~the following:~~

1 ~~(1) All teachers and substitute teachers in positions requiring~~
2 ~~certification qualifications who spend, during the last 10 years of~~
3 ~~their employment with the same employer which immediately~~
4 ~~precedes their retirement, 60 percent or more of their contract time~~
5 ~~each year providing direct instruction. For the purpose of~~
6 ~~determining continuity of employment within the meaning of this~~
7 ~~subdivision, an authorized leave of absence for sabbatical or~~
8 ~~illness or other collectively bargained or employer-approved~~
9 ~~leaves shall not constitute a break in service.~~

10 ~~(2) Other certificated personnel who spend, during the last 10~~
11 ~~years of their employment with the same employer that~~
12 ~~immediately precedes their retirement, 60 percent or more of their~~
13 ~~contract time each year providing direct services to pupils,~~
14 ~~including, but not limited to, librarians, counselors, nurses, speech~~
15 ~~therapists, resource specialists, audiologists, audiometrists,~~
16 ~~hygienists, optometrists, psychologists, driver safety instructors,~~
17 ~~and personnel on special assignment to perform school attendance~~
18 ~~and adjustment services.~~

19 ~~(d) As used in this section, “classroom teacher” does not~~
20 ~~include any of the following:~~

21 ~~(1) Certificated employees whose job descriptions require an~~
22 ~~administrative credential.~~

23 ~~(2) Certificated employees whose job descriptions include~~
24 ~~responsibility for supervision of certificated staff.~~

25 ~~(3) Certificated employees who serve as advisers,~~
26 ~~coordinators, consultants, or developers or planners of curricula,~~
27 ~~instructional materials, or programs, who spend, during the last 10~~
28 ~~years of their employment with the same employer that~~
29 ~~immediately precedes their retirement, less than 60 percent of their~~
30 ~~contract time in direct instruction.~~

31 ~~(4) Certificated employees whose job descriptions require~~
32 ~~provision of direct instruction or services, but who are functioning~~
33 ~~in nonteaching assignments.~~

34 ~~(5) Classified employees.~~

35 ~~(e) This section shall apply only to teachers employed by an~~
36 ~~employer that has, pursuant to Chapter 10.7 (commencing with~~
37 ~~Section 3540) of Division 4 of Title 1 of the Government Code,~~
38 ~~entered into a written agreement with an exclusive representative,~~
39 ~~that makes this section applicable to all of its classroom teachers,~~
40 ~~as defined in subdivision (c).~~

~~(f) The written agreement shall include a mechanism to pay for all increases in allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in allowances provided by this section and related administrative costs; and a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of increases in allowances, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund the amount determined by the Teachers' Retirement Board to be the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the plan's Defined Benefit Program, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.~~

~~(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is a member of the Public Employees' Retirement System pursuant to Section 22508, that he or she may, within 60 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this plan's Defined Benefit Program. However, only service credited under the Defined Benefit Program subsequent to the date of that election shall be subject to this section.~~

1 ~~(h) An employer that agrees to become subject to this section,~~
2 ~~shall, on a form and within the timeframes prescribed by the~~
3 ~~system, certify the applicability of this section to a member~~
4 ~~pursuant to the criteria set forth in this section when a retirement,~~
5 ~~disability, or family allowance becomes payable.~~

6 ~~(i) For a nonmember spouse, final compensation shall be~~
7 ~~determined pursuant to paragraph (2) of subdivision (e) of Section~~
8 ~~22664. The employer, within 30 days of receiving an invoice from~~
9 ~~the system, shall reimburse the retirement fund pursuant to~~
10 ~~subdivision (f). Interest shall be charged at the regular interest rate~~
11 ~~for payments not received within the prescribed timeframe.~~
12 ~~Payments not received within 30 days of invoicing may be~~
13 ~~collected pursuant to Section 23007.~~

14 SEC. 4. Section 22136 of the Education Code is repealed.

15 ~~22136. (a) "Final compensation" with respect to a member~~
16 ~~whose salary while an active member was reduced because of a~~
17 ~~reduction in school funds means the highest average annual~~
18 ~~compensation earnable by the member during any three years~~
19 ~~while employed to perform creditable service subject to coverage~~
20 ~~by the Defined Benefit Program if the member elects to be subject~~
21 ~~to this section.~~

22 ~~(b) For the purposes of this section, a year shall be considered~~
23 ~~to be a period of 12 consecutive months.~~

24 SEC. 5. Section 22664 of the Education Code is amended to
25 read:

26 22664. The nonmember spouse who is awarded a separate
27 account shall have the right to a service retirement allowance and,
28 if applicable, a retirement benefit under this part.

29 (a) The nonmember spouse shall be eligible to retire for service
30 under this part if the following conditions are satisfied:

31 (1) The member had at least five years of credited service
32 during the period of marriage, at least one year of which had been
33 performed subsequent to the most recent refund to the member of
34 accumulated retirement contributions. The credited service may
35 include service credited to the account of the member as of the date
36 of the dissolution or legal separation, previously refunded service,
37 out-of-state service, and permissive service credit that the member
38 is eligible to purchase at the time of the dissolution or legal
39 separation.

(2) The nonmember spouse has at least 2 $\frac{1}{2}$ years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento and the effective date is after the date the judgment or court order pursuant to Section 22652 was entered.

(c) (1) Upon service retirement at normal retirement age under this part, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments equal to 2 percent of final compensation for each year of credited service.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

Age at Retirement	Percentage
60 $\frac{1}{4}$	2.033
60 $\frac{1}{2}$	2.067
60 $\frac{3}{4}$	2.10
61	2.133
61 $\frac{1}{4}$	2.167
61 $\frac{1}{2}$	2.20

1	61 ³ / ₄	2.233
2	62	2.267
3	62 ¹ / ₄	2.30
4	62 ¹ / ₂	2.333
5	62 ³ / ₄	2.367
6	63 and over	2.40

7

8 (4) In computing the retirement allowance of the nonmember
9 spouse, the age of the nonmember spouse on the last day of the
10 month in which the retirement allowance begins to accrue shall be
11 used.

12 (5) Final compensation, for purposes of calculating the service
13 retirement allowance of the nonmember spouse under this
14 subdivision, shall be calculated according to the definition of final
15 compensation in Section 22134, ~~22134.5, 22135, or 22136,~~
16 ~~whichever is applicable,~~ and shall be based on the member's
17 compensation earnable up to the date the parties separated, as
18 established in the judgment or court order pursuant to Section
19 22652. The nonmember spouse ~~shall may not be entitled to~~ use any
20 other calculation of final compensation.

21 (d) Upon service retirement under this part, the nonmember
22 spouse shall receive a retirement benefit based on an amount equal
23 to the balance of credits in the nonmember spouse's Defined
24 Benefit Supplement account on the date the retirement benefit
25 becomes payable.

26 (1) A retirement benefit shall be a lump-sum payment, or an
27 annuity payable in monthly installments, or a combination of both
28 a lump-sum payment and an annuity, as elected by the nonmember
29 spouse on the application for a retirement benefit. Any retirement
30 benefit paid as an annuity under this chapter shall be subject to
31 Sections 22660 and 25011.

32 (2) Upon distribution of the entire retirement benefit in a
33 lump-sum payment, no other benefit shall be payable to the
34 nonmember spouse or the nonmember spouse's beneficiary under
35 the Defined Benefit Supplement Program.

36 (e) If the member is or was receiving a disability allowance
37 under this part with an effective date before or on the date the
38 parties separated as established in the judgment or court order
39 pursuant to Section 22652, or at any time applies for and receives
40 a disability allowance with an effective date that is before or



1 coincides with the date the parties separated as established in the
2 judgment or court order pursuant to Section 22652, the
3 nonmember spouse shall not be eligible to retire until after the
4 disability allowance of the member terminates. If the member who
5 is or was receiving a disability allowance returns to employment
6 to perform creditable service subject to coverage under the
7 Defined Benefit Program or has his or her allowance terminated
8 under Section 24015, the nonmember spouse may not be paid a
9 retirement allowance until at least six months after termination of
10 the disability allowance and the return of the member to
11 employment to perform creditable service subject to coverage
12 under the Defined Benefit Program, or the termination of the
13 disability allowance and the employment or self-employment of
14 the member in any capacity, notwithstanding Section 22132. If at
15 the end of the six-month period, the member has not had a
16 recurrence of the original disability or has not had his or her
17 earnings fall below the amounts described in Section 24015, the
18 nonmember spouse may be paid a retirement allowance if all other
19 eligibility requirements are met.

20 (1) The retirement allowance of the nonmember spouse under
21 this subdivision shall be calculated as follows: the disability
22 allowance the member was receiving, exclusive of the portion for
23 dependent children, shall be divided between the share of the
24 member and the share of the nonmember spouse. The share of the
25 nonmember spouse shall be the amount obtained by multiplying
26 the disability allowance, exclusive of the portion for dependent
27 children, by the years of service credited to the separate account
28 of the nonmember spouse, including service projected to the date
29 of separation, and dividing by the projected service of the member.
30 The nonmember spouse's retirement allowance shall be the lesser
31 of the share of the nonmember spouse under this subdivision or the
32 retirement allowance under subdivision (c).

33 (2) The share of the member shall be the total disability
34 allowance reduced by the share of the nonmember spouse. The
35 share of the member shall be considered the disability allowance
36 of the member for purposes of Section 24213.

37 (f) The nonmember spouse who receives a retirement
38 allowance is not a retired member under this part. However, the
39 allowance of the nonmember spouse shall be increased by
40 application of the improvement factor and shall be eligible for the



1 application of supplemental increases and other benefit
2 maintenance provisions under this part, including, but not limited
3 to, Sections 24411, 24412, and 24415 based on the same criteria
4 used for the application of these benefit maintenance increases to
5 the service retirement allowances of members.

6 SEC. 6. Section 24201 of the Education Code is amended to
7 read:

8 24201. (a) A member may retire for service under this part
9 upon written application for retirement to the board, under
10 paragraph (1) or (2) as follows:

11 (1) The member has attained the age of 55 years or more and
12 has at least five years of credited service, at least one year of which
13 has been performed subsequent to the most recent refund of
14 accumulated retirement contributions. The five years of credited
15 service may include out-of-state service purchased pursuant to
16 Section 22820. The number of years of credited service performed
17 in California ~~shall~~ may not be less than the number of years
18 necessary to determine final compensation pursuant to Section
19 22134 ~~or 22135, whichever is applicable to the member.~~

20 (2) The member is credited with service that is not used as a
21 basis for benefits under any other public retirement system,
22 excluding the federal social security system, if the member has
23 attained the age of 55 years or older and retires concurrently under
24 one or more of the retirement systems with which the member has
25 concurrent membership as defined in Section 22115.2.

26 (b) Application for retirement under paragraph (2) of
27 subdivision (a) may be made even if the member has not earned
28 five years of credited service.

29 SEC. 7. Section 24600 of the Education Code is amended to
30 read:

31 24600. (a) A retirement allowance under this part begins to
32 accrue on the effective date of the member's retirement and ceases
33 on the earlier of the day of the member's death or the day on which
34 the retirement allowance is terminated for a reason other than the
35 member's death.

36 (b) A retirement allowance payable to an option beneficiary
37 under this part begins to accrue on the day following the day of the
38 retired member's death and ceases on the day of the option
39 beneficiary's death.

1 (c) A disability allowance under this part begins to accrue on
2 the effective date of the member's disability allowance and ceases
3 on the earlier of the day of the member's death or the day on which
4 the disability allowance is terminated for a reason other than the
5 member's death.

6 (d) A family allowance under this part begins to accrue on the
7 day following the day of the member's death and ceases on the day
8 of the event that terminates eligibility for the allowance.

9 (e) A survivor benefit allowance payable to a surviving spouse
10 under this part pursuant to Chapter 23 (commencing with Section
11 23850) begins to accrue on the day the member would have
12 attained 60 years of age or on the day following the day of the
13 member's death, as elected by the surviving spouse, and ceases on
14 the day of the surviving spouse's death.

15 (f) A child's portion of an allowance under this part begins to
16 accrue on the effective date of that allowance and ceases on the
17 earlier of either the termination of the child's eligibility or the
18 termination of the allowance.

19 (g) Supplemental payments issued under this part pursuant to
20 Sections 24411, 24412, and 24415 to retired members, disabled
21 members, and beneficiaries shall begin to accrue pursuant to
22 Sections 24411, 24412, and 24415 and shall cease to accrue as of
23 the termination dates specified in subdivisions (a) to (f), inclusive,
24 of this section.

25 (h) Notwithstanding any other provision of this part or other
26 law, distributions payable under the plan with respect to the
27 Defined Benefit Program and the Defined Benefit Supplement
28 Program shall be made in accordance with applicable provisions
29 of the Internal Revenue Code of 1986, as amended, and related
30 regulations. The required beginning date of benefit payments that
31 represent the entire interest of the member in the plan with respect
32 to the Defined Benefit Program and the Defined Benefit
33 Supplement Program shall be either:

34 (1) In the case of a refund of contributions, as described in
35 Chapter 18 (commencing with Section 23100) of this part and
36 distribution of an amount equal to the balance of credits in a
37 member's Defined Benefit Supplement account, as described in
38 Chapter 38 (commencing with Section 25000) of this part, not later
39 than April 1 of the calendar year following the later of the calendar
40 year in which the member attains age 70¹/₂ years of age or the

1 calendar year in which the member terminates employment within
2 the meaning of subdivision (i).

3 (2) In the case of a retirement allowance, as defined in Section
4 22166, not later than April 1 of the calendar year following the
5 later of (A) the calendar year in which the member attains 70¹/₂
6 years of age or (B) the calendar year in which the member
7 terminates employment within the meaning of subdivision (i), to
8 continue over the life of the member or the lives of the member and
9 the member's option beneficiary, or over the life expectancy of the
10 member or the life expectancy of the member and the member's
11 option beneficiary.

12 (i) For purposes of subdivision (h), the phrase "terminates
13 employment" means the later of:

14 (1) The date the member ceases to perform creditable service
15 subject to coverage under this plan.

16 (2) The date the member ceases employment in a position
17 subject to coverage under another public retirement system in this
18 state if the compensation earnable while a member of the other
19 system may be considered in the determination of final
20 compensation pursuant to Section 22134, ~~22135, or 22136.~~

21 SEC. 8. It is the intent of the Legislature that the funding for
22 any increased costs resulting from the implementation of this act
23 shall be derived from existing funds within the Teachers'
24 Retirement Fund.

